

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MICHAEL J. QUILLING,

Plaintiff,

File No. 1:03-CV-236

v.

HON. ROBERT HOLMES BELL

TRADE PARTNERS, INC., et al.,

Defendants.

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**ORDER APPROVING AND ADOPTING  
REPORT AND RECOMMENDATION**

In accordance with the opinion entered this date,

**IT IS HEREBY ORDERED** that the Report and Recommendation (Docket #'s 1238 & 1243) regarding New Era's motion to dismiss the Receiver's ancillary complaint is **APPROVED AND ADOPTED** as the opinion of this Court.

**IT IS FURTHER ORDERED** that New Era's motion to dismiss the Receiver's ancillary complaint (Docket # 921) is **GRANTED IN PART and DENIED IN PART** as follows:

1. New Era's motion to dismiss the Receiver's objections to New Era's claims is **DENIED**.
2. New Era's motion to dismiss the Receiver's affirmative equitable subordination and recharacterization as equity claims is **DENIED**.
3. New Era's motion to dismiss the Receiver's cause of action for aiding and abetting breach of fiduciary duty is **DENIED** without prejudice.

4. New Era's motion to dismiss the Receiver's cause of action for aiding and abetting corporate waste is **GRANTED** subject to the Receiver's ability to seek reinstatement of this cause of action by submitting, within 30 days of this order, Michigan or Sixth Circuit authority that it is recognized as an independent cause of action in Michigan.

5. New Era's motion to dismiss the Receiver's conspiracy cause of action is **GRANTED**, provided that ¶¶ 38 and 39 are allowed to remain insofar as they provide additional factual support for the Receiver's objections on any of the claims allowed to go forward.

6. New Era's motion to dismiss the receiver's RICO claims is **GRANTED**.

7. New Era's motion to dismiss the Receiver's claim for fraudulent transfer is **DENIED**.

8. New Era's motion to dismiss Greenville LLC and gateway LLC's claims for deepening insolvency is **GRANTED**.

Date: March 31, 2006

/s/ Robert Holmes Bell  
ROBERT HOLMES BELL  
CHIEF UNITED STATES DISTRICT JUDGE